IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION(MAIN) NO. 339 OF 2006

Mr. Rasiklal M. Gangani,
resident of Galaxy Building,
Opposite Hotel Nova Goa,
Panaji-Goa. ... Applicant

versus

1. Mr. Mahesh Gaonkar,
   Police Inspector,
   Panaji Police Station,
   now transferred to
   Vasco Police Station,
   Vasco-Goa.

2. Mr. Vaman Tari,
   Deputy Superintendent of
   Police, SDPO, Panaji, Goa.

3. Mr. Dilip Shirodkar,
   near Salgaocar College,
   Miramar-Goa.

4. Mr. Brian Rodrigues,
   Vasco-Goa(Respondent
   Nos.3 and 4 have no House
   Number).

5. State of Goa. ... Respondents

Mr. Rohit Bras De Sa, Advocate for the Applicant.

Mr. C. A. Ferrerira, Public Prosecutor for the Respondent No.5.

CORAM : N. A. BRITTO, J.

DATE : 7TH SEPTEMBER, 2007.

ORAL ORDER

Challenge in this petition, filed under Section 482 of the Code of Criminal Procedure, 1973, by the Complainant in C. C. No.898/OA/2004/C is to the Judgment dated 4-8-2006 of the learned Sessions Judge, Panaji, upholding the Order dated 28-10-2005 of the learned J.M.F.C., Panaji, dismissing the complaint against accused nos. 1 to 4.

2. Although the said complaint was dismissed against accused nos.1 to 4, it appears that the said order was challenged only as regards accused no.3/Mahesh Gaonkar, Police Inspector, Panaji Police Station and Vaman Tari, Dy. S. P./SDPO, Panaji(i.e. Respondent Nos.1 and 2 herein). Surprisingly, accused no.1 was the State of Goa and accused no.2 was Superintendent of Police, North Goa, Porvorim(without name).

3. As can be seen from the complaint filed by the Complainant, the Complainant had business dealings with A-5/Dilip Shirodkar, and A-6/Brian Rodrigues was the partner of the said A-5/Dilip Shirodkar. The incident in relation to the said accused nos.5/Dilip and 6/Brian is stated to have taken place on 14-1-2003. As per the Complainant, on that day, he had been to Souza Towers opposite Municipal garden to meet his Chartered Accountant and when at about

13.45 hours the Complainant had reached his house, opposite Nova Goa Hotel, the Complainant saw two persons standing on the road and one of them came up to the Complainant and informed the Complainant that A-5/Dilip Shirodkar wanted to talk to the Complainant and handed over his mobile phone to the Complainant and while talking over the mobile phone the said A-5/Dilip Shirodkar abused and threatened the Complainant to kill him if his dues were not paid and in case the Complainant did not agree to meet A-5/Dilip Shirodkar right then, he would abduct the Complainant or any of the Complainant's family members and then the said A-5/Dilip Shirodkar told the Complainant to talk to his partner A-6/Brian Rodrigues on the mobile phone and the said Brian Rodrigues also threatened and abused the Complainant in filthy language and disconnected the mobile, and, immediately thereafter the Complainant saw a blue colour car bearing No.GA-02-8007 coming towards the Complainant which was being driven by A-5/Dilip Shirodkar with A-6/Brian Rodrigues sitting by his side, and when the Complainant tried to run away apprehending some danger, the said two persons, forcibly tried to put the Complainant inside the car but the Complainant raised an alarm and people gathered and the Complainant succeeded in freeing himself from the clutches of the two persons and escaped but was followed by the two persons and while running the Complainant fell down on the road sustaining injuries on the left hand and on the chin, and the Complainant's shirt was torn in that process and although a crowd gathered, none interfered due to fear of their own lives.

4. As far as the above incident is concerned, there is no dispute that the learned J.M.F.C. was pleased to issue process against the said accused nos.5/Dilip and 6/Brian under Section 383 r/w 511 I.P.C. and Sections 352, 341, 504, 506 r/w 34 I.P.C.

5. It was also the case of the Complainant that on the same day at about 14.30 hours he went to Panaji Police Station to lodge his complaint and he narrated the incident to the Officer in charge of the complaint desk who asked him to wait for the return of Mahesh Gaonkar, Police Inspector, since he had gone out for lunch and at about 17.00 hours Mahesh Gaokar returned to the Police Station and till that time the Complainant was sitting at the Police Station and thereafter the said Mahesh Gaonkar called the Complainant to his cabin and asked the Complainant whether the Complainant was really very serious in lodging the complaint against A-5/Dilip Shirodkar to which the Complainant replied in the affirmative and thereafter gave instructions to his junior officer to accept the Complainant's complaint which was accepted at about 19.00 hours but the Complainant was not given the copy of the F.I.R. nor the details whether a cognizable or non cognizable case was recorded by the Police.

6. It appears that as no F.I.R. was registered upon the complaint, the Complainant made a representation to the Superintendent of Police in terms of Section 154(4) of the Code of Criminal Procedure, 1973 on 18-1-2003 and although it was alleged by the Complainant that the said Superintendent of Police,

North, had deliberately failed to take instant orders directing his subordinates to register the case and to take up the investigations, the Complainant did not challenge the order dismissing the complaint against him. It appears that pursuant to the said representation made by the Complainant to the Superintendent of Police, the Complainant was called by the Dy. S. P. Shri Vaman Tari on 29-1-2003 and was questioned by him when, according to the Complainant the said A-5/Dilip Shirodkar entered the chamber of the said Dy. S. P. Shri Tari and the said Shri Tari informed the said A-5/Dilip Shirodkar that he wanted to lodge a F.I.R. against him. According to the Complainant the said A-5/Dilip Shiordkar intimidated the Complainant in the presence of Dy. S. P. Shri Tari and in the course of the said intimidation the said Dy. S. P. Shri Tari offered advice to the said A-5/Dilip Shirodkar to file a cross complaint against him and as the Complainant was not keeping well on account of high blood pressure he sought leave of Dy. S. P. Shri Tari and since Dy. S. P. Shri Tari insisted that the Complainant gives a statement, the Complainant gave a statement stating that he was not keeping well and that he would come to the Police Station on the 3rd or 4th February, 2003 to give a statement and at that time the Dy. S. P. Shri Tari did not disclose to him that he was closely related to the said A-5/Dilip Shirodkar and at that time the said Vaman Tari tried to protect and save A-5/Dilip Shirodkar and A-6/Brian Rodrigues from punishment.

7. It appears that the Complainant filed a Writ Petition bearing No.2 of 2003 before this Court for a direction to the Police Inspector for registering the

complaint lodged by him as a F.I.R. and at the hearing of the said petition the Complainant was given a N. C. dated 7-2-2003 recorded by Shri Mahesh Gaonkar, the Police Inspector. It also appears that subsequently a F.I.R. was also registered being Crime No.36/2003 under Sections 357, 506(ii) r/w 34 I.P.C. against the said A-5/Dilip Shirodkar and A-6/Brian Rodrigues but till date no charge-sheet has been filed and the Complainant has been informed that the investigations have been shelved for the present. It also appears that a counter complaint filed by A-5/Dilip Shirodkar against the Complainant herein which was registered as Crime No.37/2003 was quashed and set aside on 7-11-2003, after the Complainant approached this Court in Criminal Miscellaneous Application No.52/2003 under Section 482 of the Code.

8. The complaint filed against the accused nos.1 to 4(except A-5/Dilip Shirodkar and A-6/Brian Rodrigues) under Sections, 166, 193, 201, 217, 321, 339, 388 r/w 34 I.P.C. which as already stated has been dismissed by the learned J.M.F.C. The learned J.M.F.C. dismissed the said complaint against the said accused on the ground that the Complainant had failed to establish the ingredients of the aforesaid offences and also because the said accused were Government servants and no sanction was obtained for their prosecution. The learned Magistrate also noted that the acts did not fall beyond their official duty. The learned Magistrate also held that there was no evidence of any violation of the human rights of the Complainant to proceed against the said accused nos.1 to 4.

9. The learned Sessions Judge noted that the allegations levelled against A-3/Mahesh Gaonkar and A-4/Vaman Tari were that they had not registered the complaint which was lodged by the Complainant and that a false F.I.R. was registered against a false complaint lodged by A-5/Dilip Shirodkar and since the alleged offences were committed by A-3/Mahesh Gaonkar and A-4/Vaman Tari were committed while acting or while purporting to act in discharge of official duty and as such sanction under Section 197 was required to prosecute them, as was rightly held by the learned Magistrate. It also appears that the Complainant had also filed another complaint on the same set of facts which since then has been dismissed as withdrawn.

10. It appears that at one stage the Complainant had approached Human Rights Court as constituted under Section 30 of the Protection of Human Rights Act, 1993, for offences committed not only by the said accused nos.5/Dilip and 6/Brian but also for the alleged offences committed by A-2/Superintendent of Police, A-3/Police Inspector Mahesh Gaokar and A-4/Dy. S. P. Vaman Tari. One does not know why the Complainant approached the Human Rights Court. Although the Protection of Human Rights Act, 1993 has defined “human rights” in terms of Section 2(d) thereof it has not created any offences which could be dealt with and tried by the Human Rights Court as constituted under Section 30 of the said Act and all that that Court could do, as the law stands today, is try only offences committed under the Indian Penal Code.

11. First of all, it must be stated that the commission of offences by accused nos. 5/Dilip and 6/Brian on one hand and the alleged commission of offences by the Police Officers in not taking certain steps as regards investigations into the aforesaid offences could not have been the subject matter of one and the same complaint as they could not have been said to have been committed in the course of the same transaction and this is the first aspect which the Courts below ought to have considered and directed the Complainant to restrict the allegations against accused nos.5/Dilip and 6/Brian and file a separate complaint as regards the remaining accused. The learned Counsel on behalf of the Complainant has placed reliance on the case of **Mohan Baitha and others** v. **State of Bihar and another**((2001) 4 SCC 350) and submitted that "same transaction" from its very nature is incapable of an exact definition. The Apex Court in the aforesaid case has stated that circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form part of the same transaction or not. In my view, none of the aforesasid factors were present in the facts alleged. The commission of offences by the said accused nos.5/Dilip and 6/Brian had nothing to do with the alleged offences committed by the remaining accused which related to certain acts or omissions in connection with the investigations relating the said offences and therefore could not be the subject matter of one and the same complaint.

12. As per the Complainant, the Complainant had asked for a F.I.R. copy with the Duty officer and he was told that he would be given the same later. As stated by the Complainant, the Complainant had suffered injuries on his left hand and chin as he fell down while running away from the said two accused. The contention of learned Counsel on behalf of the Complainant, is that A-3/Police Inspector Shri Mahesh Gaonkar committed an offence punishable under Section 201 I.P.C. by destroying medical evidence which could have been obtained, had the Complainant been sent for medical examination. The contention needs to be noted only to be rejected. In fact nothing prevented the Complainant from going for medical examination either before going to the Police Station or thereafter between 14.30 hours and 19.00 hours when he was wanting for the arrival of A-3/Police Inspector Shri Gaonkar and thereafter also. If at all the complaint was recorded by the Duty Officer, as per the directions of accused Police Inspector, then certainly it would have been the duty of the former to have sent the Complainant for medical examination and not that of A-3/Police Inspector Shri Gaonkar. In any event, it must be stated that not sending a person for medical examination cannot be equated with causing disappearance of evidence which is defined in Section 201 I.P.C. Next, the learned Counsel on behalf of Complainant contends that A-3/Police Inspector Shri Gaonkar gave the said N. C. which was not in accordance with the complaint lodged by the Complainant and here again it can be seen that on the very face of the said N. C. that the same was issued as per the instructions of A-4/Vaman Tari and for which Section 166 I.P.C. would be inapplicable. Learned Counsel next submits that

A-4/Vaman Tari by advising A-5/Dilip Shirodkar that he should lodge a complaint against the Complainant committed an offence under Section 193 I.P.C. Here again, it may be stated that if at all the complaint was filed by the said A-5/Dilip Shirodkar against the Complainant and even if it was on the advice of A-4/Vaman Tari the latter could not be implicated for having committed an offence under Section 193 I.P.C. It appears that what A-4/Dy. S. P. did was to look into the matter of the complaint sent by the Complainant to the Superintendent of Police vide his application dated 18-1-2003.

13. Learned Public Prosecutor Mr. C. A. Ferreira referred to **All India Institute of Medical Sciences Employees Union(Regd.) through its President** v. **Union of India and others**((1996) 11 SCC 582) and has submitted that in case the Complainant's complaint was not registered by A-3/Police Inspector Shri Gaonkar, Complainant was free to file a complaint against the Magistrate. Learned Public Prosecutor has also relied on **Parkash Singh Badal and another** v. **State of Punjab and others**((2007) 1 SCC 1) and submitted that in case an officer in charge of the Police Station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to

him in the manner provided by sub-section(3) of Section 154 of the Code.

14. Learned Public Prosecutor has also submitted, and in my view rightly, that the Complainant had failed to show that the said accused had exceeded their duties and therefore the provisions of Section 197 would clearly be attracted and in the absence of sanction no cognizance could have been taken against the said Inspector and Dy. S. P. In fact that is the conclusion arrived at by both the Courts below.

15. In my opinion, therefore, this is not a fit case to exercise extraordinary jurisdiction under Section 482 of the Code. Hence, the petition is hereby rejected, in limine.

N. A. BRITTO, J.

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